

XC-4145(tk) DJM
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARWOOD SURPLUS LINES INSURANCE
COMPANY, successor in interest to ROYAL
SURPLUS LINES INSURANCE COMPANY,

CIVIL ACTION NO.: 07 CV 8608(DLC)

Plaintiff,

ANSWER

-against-

BRUCKNER PLAZA ASSOCIATES, L.P.,
BRUCKNER PLAZA CORP., AND
ESTHER SCHULDER,

HON. DENISE COTE

Defendants.

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S I R S:

Defendants, **BRUCKNER PLAZA ASSOCIATES, L.P., BRUCKNER PLAZA CORP., AND ESTHER SCHULDER**, by their attorneys, DeCICCO, GIBBONS & McNAMARA, P.C., answering the complaint of the plaintiff herein, respectfully allege:

AS AND FOR AN ANSWER TO THE PARTIES

FIRST: Deny knowledge or information sufficient to form an opinion or belief as to those allegations contained in paragraph designated "1" of the complaint.

SECOND: Deny each and every allegation contained in paragraph designated "4" of the complaint.

AS AND FOR AN ANSWER TO JURISDICTION AND VENUE

THIRD: Deny each and every allegation contained in paragraphs designated "5" through "7" inclusive, of the complaint and beg leave to refer all questions of law and fact to the trial of the action.

AS AND FOR AN ANSWER TO THE INSURANCE CONTRACTS

FOURTH: Deny knowledge or information sufficient to form an opinion or belief as to those allegations contained in paragraph designated "8" of the complaint.

FIFTH: Deny each and every allegation contained in paragraphs designated "9" through "11" inclusive, of the complaint and beg leave to refer all questions of law and fact to the trial of the

action.

AS AND FOR AN ANSWER TO THE PERSONAL INJURY ACTION

SIXTH: Deny each and every allegation contained in paragraphs designated "12" through "19" inclusive, of the complaint and beg leave to refer all questions of law and fact to the trial of the action.

AS AND FOR AN ANSWER TO DECLARATORY RELIEF IS APPROPRIATE

SEVENTH: Deny each and every allegation contained in paragraph "20" of the complaint.

EIGHTH: Deny each and every allegation contained in paragraph designated "21" of the complaint and beg leave to refer all questions of law and fact to the trial of the action.

AS AND FOR AN ANSWER TO A FIRST CAUSE OF ACTION

NINTH: : In response to paragraph "22", defendants repeat, reiterate and reallege each and every denial of those allegations contained in paragraphs designated "1" through "21" inclusive, of the Complaint with the same force and effect as though more fully set forth at length herein.

TENTH: Deny each and every allegation contained in paragraph designated "23" of the complaint and beg leave to refer all questions of law and fact to the trial of the action.

AS AND FOR AN ANSWER TO A SECOND CAUSE OF ACTION

ELEVENTH: In response to paragraph "24", defendants repeat, reiterate and reallege each and every denial of those allegations contained in paragraphs designated "1" through "23" inclusive, of the Complaint with the same force and effect as though more fully set forth at length herein.

TWELFTH: Deny each and every allegation contained in paragraph designated "25" of the complaint and beg leave to refer all questions of law and fact to the trial of the action.

AS AND FOR AN ANSWER TO A THIRD CAUSE OF ACTION

THIRTEENTH: In response to paragraph "26", defendants repeat, reiterate and reallege each and every denial of those allegations contained in paragraphs designated "1" through "25" inclusive, of the Complaint with the same force and effect as though more fully set forth at length herein.

FOURTEENTH: Deny each and every allegation contained in paragraph designated "27" of the complaint and beg leave to refer all questions of law and fact to the trial of the action.

AS AND FOR AN ANSWER TO A FOURTH CAUSE OF ACTION

FIFTEENTH: In response to paragraph "28", defendants repeat, reiterate and reallege each and every denial of those allegations contained in paragraphs designated "1" through "27" of the Complaint with the same force and effect as though more fully set forth at length herein.

FOURTEENTH: Deny each and every allegation contained in paragraphs designated "29", "30", "33" and "34" of the complaint.

FIFTEENTH: Deny each and every allegation contained in paragraph designated "31" and beg leave to refer all questions of law and fact to the trial of the action.

AS AND FOR AN ANSWER TO A FIFTH CAUSE OF ACTION

SIXTEENTH: In response to paragraph "35", defendants repeat, reiterate and reallege each and every denial of those allegations contained in paragraphs designated "1" through "34" of the Complaint with the same force and effect as though more fully set forth at length herein.

SEVENTEENTH: Deny each and every allegation contained in paragraphs designated "36" through "39" inclusive, of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

EIGHTEENTH: That the complaint fails to state facts sufficient to constitute a legal cause of action against answering defendants.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

NINETEENTH: Plaintiff's claims are barred by *laches*.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

TWENTIETH: Plaintiff's claims are barred by waiver.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

TWENTY-FIRST: Plaintiff's claims are barred by equitable *estoppel*.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

TWENTY-SECOND: Plaintiff's claims are barred by the applicable statutes of limitations.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

TWENTY-THIRD: Plaintiff's claims are barred by the voluntary payment doctrine.

AS AND FOR A SEVEN AFFIRMATIVE DEFENSE

TWENTY-FOURTH: There is a failure to include necessary parties in this litigation.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

TWENTY-FIFTH: The right to supplement or amend the denial of re-tender and this answer pending receipt of further information is reserved.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

TWENTY-SIXTH: The defendants reserve the right to assert any additional affirmative defenses and claims of avoidance as may be appropriate based upon the facts or issues disclosed during the course of additional investigation and discovery.

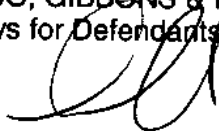
WHEREFORE, defendants, BRUCKNER PLAZA ASSOCIATES, L.P., BRUCKNER PLAZA CORP., AND ESTHER SCHULDER, request that the Court enter judgment:

- A. Declaring that plaintiff is obligated to defend and indemnify defendants for all amounts in connection with the underlying personal injury action;
- B. Declaring that defendants are not obligated to reimburse plaintiff any sum(s) of money;
- C. Declaring that plaintiff is barred from now attempting to void its coverage obligations to defendants;
- D. Declaring that the within action should be dismissed;
- E. Awarding defendants their costs, in this action; and
- F. Awarding defendants such other and further relief as this Court deems just and proper.

DATED: New York, New York
December 18, 2007

Yours, etc.,

DeCICCO, GIBBONS & McNAMARA, P.C.
Attorneys for Defendants



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